

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

K.O. and E.O., Jr., by and through their )  
parents and next friends, E.O. and L.J.; and C.J., )  
by and through his father and next friend F.C.; )  
each individually and on behalf of )  
all others similarly situated, )

Plaintiffs, )

v. )

C.A. No. 18-40149-TSH

JEFFERSON BEAUREGARD SESSIONS III, Former )  
Attorney General of the United States; KIRSTJEN )  
NIELSEN, Secretary of the United States Department )  
of Homeland Security (DHS); JOHN F. KELLY, )  
White House Chief of Staff; STEPHEN MILLER, )  
Senior Advisor to the President; GENE HAMILTON, )  
Counselor to the Attorney General Sessions; )  
THOMAS HOMAN, former Director of United States )  
Immigration and Customs Enforcement (ICE); )  
RONALD D. VITIELLO, Acting Director of ICE; L. )  
FRANCIS CISSNA, Director of United States )  
Citizenship and Immigration Services (USCIS); )  
KEVIN K. MCALEENAN, Commissioner of United )  
States Customs and Border Protection (CBP); ALEX )  
AZAR, Secretary of the United States Department of )  
Health and Human Services (HHS); SCOTT LLOYD, )  
Director of the United States Office of Refugee )  
Resettlement (ORR); JOHN DOE ICE AGENTS; )  
JOHN DOE CBP AGENTS; and JOHN DOE ORR )  
PERSONNEL, )

Defendants. )

MOTION TO DISMISS

Plaintiffs K.O., E.O., Jr., and C.J. claim that they were separated from their parents at the United States-Mexico border when federal authorities arrested Plaintiffs' parents after they attempted to enter the United States without documentation. Plaintiffs and their parents have since been reunited. Nonetheless, Plaintiffs now sue eleven current and former high-ranking

government employees for the allegedly unconstitutional government policies and related actions which Plaintiffs contend resulted in these temporary separations. They sue each individual in his or her personal capacity and seek money damages from them.

Defendants are: former White House Chief of Staff John F. Kelly; Senior Advisor to the President Stephen Miller; former Attorney General (“AG”) Jefferson B. Sessions, III; Counselor to the AG Gene Hamilton; Secretary of Homeland Security Kirstjen Nielsen; Commissioner of U.S. Customs and Border Protection Kevin K. McAleenan; former Director of U.S. Immigration and Customs Enforcement (“ICE”) Thomas Homan; Acting Director of ICE Ronald D. Vitiello; Director of United States Citizenship and Immigration Services L. Francis Cissna; Secretary of Health and Human Services Alex Azar; and former Director of the Office of Refugee Resettlement Scott Lloyd. All defendants move to dismiss all claims against them pursuant to Rules 12(b)(2), (3), and (6) of the Federal Rules of Civil Procedure. More specifically, the First Amended Complaint (“FAC”) should be dismissed because first, the Court lacks personal jurisdiction over any of the Defendants and this district is an improper venue for the lawsuit. Second, Plaintiffs’ FAC fails to state a claim upon which relief can be granted against Defendants because: 1) Congress has not allowed for suits against high-level officials based on the creation of executive policy or its consequences, particularly in the sensitive area of immigration enforcement; 2) Plaintiffs have access to numerous other processes to address and vindicate their constitutional claims; and 3) any implied judicial remedy in this novel context is precluded. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1860–63 (2017). Third, all Defendants are entitled to qualified immunity on all of Plaintiffs’ constitutional and statutory claims. Finally, to the extent Plaintiffs challenge an act of prosecutorial policymaking, absolute immunity bars their suit. For these reasons, all claims against Defendants should be dismissed with prejudice.

Respectfully submitted,

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MARY HAMPTON MASON  
NY Bar No. 2255198, under L.R. 83.5.3(c)  
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/s/ Paul Quast  
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*Counsel for Defendants*

**L. R. 7.1 CERTIFICATION**

Pursuant to Local Rule 7.1, Defendants' counsel asserts that he has conferred with Plaintiffs' counsel and has attempted in good faith to resolve and narrow the issues presented in this motion.

/s/ Paul Quast  
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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by means of the District Clerk's CM/ECF electronic filing system on March 8, 2019.

/s/ Paul Quast  
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